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BEFORE THE

ARIZONA CORPORATION COMMISSION

COMMISSIONERS:

KRISTEN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

Arizona Corporation Commission

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AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF QWEST CORPORATION'S
PETITION FOR ARBITRATION AND APPROVAL
OF INTERCONNECTION AGREEMENT WITH
NORTH COUNTY COMMUNICATIONS
CORPORATION OF ARIZONA PURSUANT TO
SECTION 252(B) OF THE COMMUNICATIONS
ACT OF 1934 AS AMENDED BY THE
TELECOMMUNICATIONS ACT OF 1996 AND
APPLICABLE STATE LAWS.

DOCKET NO. T-01051B-09-0383
DOCKET NO. T-03335A-09-0383

POST-HEARING BRIEF OF
NORTH COUNTY COMMUNICATIONS CORPORATION

INTRODUCTION

Qwest seeks to establish a new interconnection agreement ("ICA") with NCC, despite the fact that the existing ICA satisfies all aspects of interconnection under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act") and state laws. Indeed, the existing ICA contains a change-of-law provision, which the parties used in May of 2008 to amend the existing ICA to reflect all necessary legal changes.

Qwest has not pointed to a single part of the existing ICA that is unlawful or that requires amendment for legal reasons. In fact, Qwest has admitted that the existing ICA is in full compliance with all applicable laws.¹ Qwest has not demonstrated a legal/regulatory requirement for discarding the existing ICA and forcing NCC to accept an entirely new ICA. Instead, Qwest uses the ICA arbitration process to impose its internal business desires on NCC. Through the arbitration process, Qwest can require NCC and all other interconnecting carriers to spend time,

¹ See, e.g., Arb. Tr., 80:18-25; 81:20-25; 82:1-19 (admitting that no provisions of the existing ICA violate Arizona law, Arizona telecommunications, federal law, or federal telecommunications law).

1 money and other scarce and valuable resources to review and argue about a new ICA that
2 accomplishes a single feat: imposing terms that are unilaterally beneficial to Qwest but are not
3 required by law.

4 Qwest has failed to meet its burden of proof insofar as it has not shown a legal reason to
5 accept the proposed ICA and reject the existing ICA.² On that basis alone, the Commission
6 should refuse to approve Qwest's proposed ICA and rule that the existing ICA will continue to
7 govern the parties' interconnection relationship.

8 In this brief, NCC explains why the Commission should: (1) reject Qwest's proposed
9 prohibition on MF signaling and cap on billable minutes; (2) reject Qwest's proposed RUF factor
10 and restrictions on VVXX; (3) reject Qwest's proposed prohibitions against using third-party
11 tandem providers for interconnection; (4) prohibit Qwest from imposing multiplexer ("MUX")
12 fees and/or installation fees on trunks used solely for the delivery of Qwest's customer's calls to
13 NCC's customers or, in the alternative, allow NCC to charge reciprocal MUX and/or installation
14 fees to Qwest; (5) require Qwest to purchase NCC's CNAM data on the same terms and
15 conditions that NCC is required to purchase Qwest's CNAM data; and (6) prohibit Qwest from
16 charging NCC for the billing records that Qwest provides to NCC and that are required by NCC
17 to bill Qwest for reciprocal compensation.

18 ARGUMENT

19 **A. THE PROPOSED RESTRICTION ON OUTBOUND MF SIGNALING IS** 20 **UNLAWFUL, PREJUDICIAL AND INCONSISTENT WITH PUBLIC POLICY.**

21 Although NCC has few, if any, outbound calls at this time, nothing prevents NCC from
22 offering such services, and NCC has plans to, at some point, offer outbound calling. Other
23 carriers in Arizona operate under ICAs that do not prohibit MF signaling for outbound calls.³
24 Furthermore, Qwest has stated that NCC's MF signaling and Qwest's SS7 network are not

25 ² Qwest contends that NCC has not offered alternative language to refute the individual sections of the
26 proposed ICA that are in dispute. That position is incorrect. From the beginning of this proceeding, NCC
has asserted that the existing ICA is the ICA that should be approved by the Commission.

27 ³ Arb. Tr., 29:3-5 ("Q: Are there non-CLECs with MF interconnection trunks? [Linse]: Yes."); see also
28 Arb. Tr., 88:9-16 (admitting that some existing and active ICAs have no prohibition or limitation on MF
signaling).

1 incompatible.⁴

2 Qwest's central argument against NCC's use of MF signaling is based on its erroneous
3 belief that it cannot verify billing if NCC uses MF signaling. That position is unfounded because
4 Qwest's switches can be programmed to obtain all necessary call information from NCC.⁵ In
5 addition, other carriers in Arizona have MF trunks in addition to SS7 trunks that they use for
6 outbound calls.⁶ Qwest's switches can accommodate both MF and SS7.⁷ Qwest has simply
7 elected to turn a blind eye towards the programming changes to accommodate NCC's signaling.
8 For instance, Qwest has not discussed with its switch manufacturers how to effect a programming
9 change. Instead, Qwest's communications with its switch manufacturers have been limited to
10 obtaining a list of contacts for NCC in discovery.⁸

11 In addition to MF and SS7 interconnection, ISDN, SIP, and Voice over Internet Protocol
12 ("VoIP") are industry-accepted signaling/interconnection standards. NCC sought to include
13 interconnection via SIP/VoIP in the ICA, but Qwest has refused to discuss allowing NCC to
14 interconnect with VoIP technology. SIP would address all of Qwest's concerns, and NCC has the
15 capability to interconnect by SIP or ISDN; however Qwest refuses to interconnect using either of
16 those standards.⁹ Qwest is simply trying to force NCC to bear the burden of Qwest's technology
17 choices:

18 Mr. Linse stated in his direct testimony on page 6 at footnote 4, "SS7 is the dominant
19 signaling protocol in a Time Division Multiplex (TDM) network. As Internet Protocol networks
20 carry telecommunications traffic, IP compatible signaling protocols are being developed and used
21 for similar purposes as SS7 signaling." Mr. Linse demonstrates that his knowledge is outdated.
22 VoIP standards were developed a long time ago, and AT&T, Verizon, Vonage, Time Warner

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24 ⁴ *Id.*, 25:6-10 ("[Linse]: I wouldn't say that it's not compatible.").

25 ⁵ *See* Lesser Reply Testimony at 7-9.

26 ⁶ Arb. Tr., 93:3-8.

27 ⁷ *Id.*, 49:7-9.

28 ⁸ *Id.*, 53:17-25; 54:1-9 (admitting that Qwest did not contact its switch representatives to discuss the switches' capabilities).

⁹ Lesser Reply Testimony at 16-17.

1 Cable, Cox, Magic Jack, Skype, AOL, AIM, Google Voice and hundreds of other providers use
2 IP.¹⁰ Even Qwest offer VoIP services to its customers.

3 NCC believes that its ICA should require Qwest to offer VoIP interconnection. VoIP is
4 much more efficient than SS7 with TDM. It is clear that Qwest is proposing a standard – SS7 –
5 that is already behind the times. As stated in *Western Radio v. Qwest Corp.*, “ILECS are required
6 to provide interconnection to requesting carriers ‘that is at least equal in quality to that provided
7 by the local exchange carrier itself or to any subsidiary, affiliate, or any other party to which the
8 carrier provides interconnection....”¹¹ Qwest currently offers IP interconnection on a wholesale
9 basis to businesses and even to residential customers.¹²

10 Through VoIP, Qwest can offer up to 46 voice lines per T1, compared to only 24 voice
11 lines per T1 if NCC interconnects with Qwest using SS7.¹³ That distinction shows that Qwest
12 engages in discriminatory interconnection and forces competitors to take and provide services
13 inferior to those offered by Qwest.

14 While no other carrier in Arizona is restricted from terminating calls to Qwest, Qwest now
15 seeks to place such a restriction on NCC, and only NCC. A prohibition that targets only NCC is
16 *per se* prejudicial and, thus, unlawful and against public policy. Pursuant to 47 U.S.C. § 252(i),
17 local exchange carriers must “make available any interconnection, service, or network element
18 provided under an agreement approved under this section to which it is a party to any other
19 requesting telecommunications carrier upon the same terms and conditions as those provided in
20 the agreement.” Accordingly, NCC is allowed to opt in to one of those other non-restrictive
21 ICAs.

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26 ¹⁰ *Id.*

27 ¹¹ 51 Comm. Reg. (P & F) 202 (Or. Dist. Ct. 2010).

28 ¹² *Id.*, Exhibit 6.

¹³ *Id.*

1 In sum, Qwest has not shown that MF signaling is (1) technically infeasible, (2) not
2 widely used, or (3) currently unavailable in to other carriers in Qwest's territory. For the
3 Commission to force NCC into a different agreement contravenes what the FCC has called a
4 "primary tool" for preventing improper discrimination among carriers. *In the Matter of the*
5 *Implementation of the Local Competition Rules of the Telecommunications Act of 1996*, CC
6 Docket No. 96-98, 11 F.C.C.R. 15499, 16132, First Report and Order (August 8, 1996) ("*Local*
7 *Competition Order*"). This obligation is equally applicable to the proposed 400,000 minute cap.
8 As discussed below, that cap is not placed on any other carrier, and so cannot be placed solely on
9 NCC.

10 **B. THE PROPOSED CAP ON BILLABLE MINUTES IS ARBITRARY, UNLAWFUL,**
11 **PREJUDICIAL AND INCONSISTENT WITH PUBLIC POLICY.**

12 Beyond seeking to prevent NCC from terminating traffic to Qwest via MF signaling,
13 Qwest proposes an arbitrary, prejudicial and unlawful cap of 400,000 compensable minute of use
14 that it will pay to NCC for terminating Qwest's calls to NCC where such termination employs
15 MF signaling. Qwest asserts that the cap is due to its inability to verify calls and billing sent to
16 MF signaling because Qwest verifies calls and billing using its SS7 records. That argument
17 should fail.

18 The Federal Communications Commission ("FCC") recently recognized the widespread
19 use of MF signaling and is in the process of developing rules to would address Qwest's concerns
20 by requiring carriers that use MF signaling to transmit calling number information.¹⁴ The
21 Commission should not take action in this proceeding that would contradict the FCC's planned
22 rulemaking or otherwise prohibit a carrier from using an industry standard. Furthermore, the
23 Commission should follow the FCC's recognition of the validity of MF signaling and the FCC's
24 recognition that SS7 signaling was "was designed to facilitate call setup and routing," not to

25 ¹⁴ See *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing*
26 *Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing*
27 *an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and*
28 *Link-Up*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337,
CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, Notice of Proposed Rulemaking and
Further Notice of Proposed Rulemaking, ("NPRM"), FCC 11-13, ¶¶625-634 (rel. February 9, 2011).

1 verify billing.¹⁵

2 Qwest has admitted that, under the existing ICA, it has the ability to challenge NCC's
3 invoices, just like any other carrier's invoices.¹⁶ What Qwest now seeks to do is unlawfully
4 discriminate against NCC by arbitrarily taking an effective deduction of 60 percent off NCC's
5 invoices. It makes no similar deduction from any other CLEC's invoices. That arbitrary cap on
6 billable minutes is *per se* prejudicial.

7 Moreover, the cap is completely arbitrary. First, Mr. Linse testified that he had no idea
8 what NCC's actual usage was.¹⁷ Qwest picked an arbitrarily low number. Apparently Qwest
9 believes this cap will disincentivize NCC from having too many incoming calls. But that
10 approach is illogical. Qwest's customers who call NCC's customers would have no idea there is
11 a 400,000 cap on minutes. They have no incentive to stop calling the numbers, and NCC has no
12 ability to block calls. The only purpose of the 400,000 is to arbitrarily and prejudicially discount
13 the price Qwest pays for use of NCC's network. Approval of Qwest's proposed 400,000-minute
14 cap would constitute a regulatory takings under the seminal case of *United States v. Causby*, 328
15 U.S. 256 (1946). In addition to Mr. Linse, Ms. Albersheim admitted under cross-examination that
16 she had no idea what NCC's actual usage was.¹⁸ Qwest just pulled an arbitrarily low number out
17 of the air and called it an "accommodation." In effect, Qwest is trying to dictate NCC's
18 compensation, network usage and business growth. The Commission should not permit Qwest to
19 make such determinations.

20 Furthermore, and more importantly, the cap does not actually provide any growth rate at
21 all on a per DS1 basis. For DS1 lines, when a carrier uses one DS1 to its capacity, the calls hunt

22 ¹⁵ *Id.*, ¶628; see also Lesser Reply Testimony at 5-6 and related Exhibit 1 (Washington Utilities and
23 Transportation Commission, WECA Docket 02-01, "Report on Phantom Traffic," dated September 27,
24 2005 at page 11: "Verizon also notes that SS7 signaling is intended primarily for routing, not billing, and
therefore does not contain all the information necessary for billing the carriers responsible for traffic that
transit Verizon tandem switches.").

25 ¹⁶ Indeed, Qwest has disputed billings received from NCC. If Qwest has visibility into NCC calls and
26 billing for purposes of disputes, it cannot argue simultaneously that it cannot see and verify NCC calls and
billing. In any event, one of Qwest's positions is not true.

27 ¹⁷ Arb. Tr., 47:1-7.

28 ¹⁸ Arb. Tr., 83:21-25; 84:1-2.

1 to the second DS1 and so on. Qwest has merely averaged all NCC DS1s (24 trunks per line) and
2 then compared that average to 400,000 minutes. Quite simply stated, lines do not work that way.
3 NCC uses up to a million minutes on a DS1 before needing to overflow into a second DS1.¹⁹
4 Qwest's arbitrary cap forces 60 percent inefficiency. Indeed, Qwest's cap will require NCC to
5 purchase more DS1s in order to be compensated fully for the traffic Qwest transmits to NCC.

6 Qwest's purported inability to accurately track usage from NCC's network is a
7 fabrication. Qwest can absolutely track minutes from NCC's network. First, Qwest can provide
8 the ANI information to NCC and NCC could determine the billable minutes. ANI is available for
9 MF technology.²⁰ Other ILECs provide similar information to NCC.²¹ Qwest simply chooses
10 not to provide it. Qwest says it has not set up its switches track MF for local call trunks;
11 however, that is a choice that Qwest has made. The capability in the switch simply needs to be
12 activated. Assuming Qwest does not want to turn on that capability, it should not be allowed to
13 penalize NCC for Qwest's refusal to provide the information it "requires" to verify NCC's
14 invoices.

15 Second, if, as Qwest claims, NCC is the only carrier with local MF calls, then all it has to
16 do it subtract the total SS7 minutes from the total minutes, and that will yield the number of MF
17 minutes (or NCC minutes) terminated. If NCC is the only one with "untrackable" minutes, then
18 all "untrackable" minutes belong to NCC. As Mr. Linse admitted, Qwest can accurately verify
19 NCC's total traffic by "backing into" the number.²²

20 The cap on billable minutes is completely arbitrary and completely prejudicial and
21 therefore illegal and against public policy. If Qwest believes that NCC's invoices are incorrect, it
22 can challenge those invoices, but it cannot be permitted to treat NCC different from every other
23 carrier. Particularly, Qwest cannot arbitrarily refuse to pay for 60 percent of its use of NCC's
24 network. There is simply no basis in fact or in law for the arbitrary cap on billable minutes.

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26 ¹⁹ Lesser Direct Testimony at 15-16.

27 ²⁰ Lesser Direct Testimony at 7-10.

28 ²¹ *Id.*

²² Arb. Tr., 37:5-25; 38:1-2.

1 **C. THE COMMISSION SHOULD REJECT QWEST'S PROPOSED RELATIVE USE**
2 **FACTOR, TERMS FOR VNXX TRAFFIC, MUX FEES, AND PROHIBITION ON**
3 **THIRD-PARTY CARRIER INTERCONNECTION**

4 In another arbitrary move, Qwest proposes to count certain calls originating with Qwest's
5 customers and terminating to NCC as if they were originated by NCC and terminated to Qwest.
6 No other ILEC that NCC interconnects with determines relative use in that manner. The relative
7 use factor ("RUF") is used to determine each party's customer's relative use of the Qwest
8 network and to allocate network costs based on that relative use. Such network costs include
9 circuits, cross-connects, and MUX fees.

10 Qwest admits that nearly 100 percent of the calls exchanged between the parties are calls
11 from Qwest's customers to NCC's customers. Thus, the actual use is 100 percent Qwest.
12 Regardless, with its VNXX proposal, Qwest seeks to count certain calls from its customers as if
13 they were calls from NCC's customers. In addition, Qwest proposes unilaterally and without any
14 legal justification a self-serving definition of VNXX traffic that would prohibit NCC from
15 receiving compensation for VNXX calls. Qwest has provided no legal or regulatory justification
16 to support its VNXX proposal. Qwest simply wishes to avoid its compensation obligations. Like
17 almost all of the proposed ICA, there has been no negotiation on the VNXX issue. Qwest has
18 simply presented its VNXX definitions and exclusions on an "our-way-or-the-highway" basis.
19 Until the Commission creates rules that define and govern VNXX traffic, Qwest should not be
20 permitted to impose its unilateral, self-serving definitions and exclusions. Acceptance and
21 approval of Qwest's VNXX proposal will prohibit NCC (and all other carriers under a similar
22 ICA) from offering a full range of competitive telecommunications services.

23 With regard to MUX fees, Qwest should not be allowed to bill NCC for 100 percent of the
24 MUXes on Qwest's network while Qwest refuses to credit NCC for the use of the MUXes on
25 NCC's side of the circuit. No other ILEC charges NCC for MUXes.²³ Indeed, the MUXes on
26 Qwest's side of the network are necessary for Qwest to interconnect with NCC and to get its calls
27 to NCC.²⁴ Similarly, NCC uses MUXes on its network side to interconnect with Qwest.²⁵

28 ²³ Lesser Reply Testimony at 10-12.

²⁴ *Id.*

1 Despite NCC's same use of MUXes, Qwest unilaterally charges NCC for Qwest's MUXes while
2 at the same time refusing to pay NCC for its MUXes.

3 Qwest should be fully responsible for its MUX fees. Indeed, the Arizona Administrative
4 Code, 14-2-1303(B), regarding "Points of Interconnection," states that "[e]ach company
5 interconnecting pursuant to the provisions of this Section shall be responsible for building and
6 maintaining *its own facilities to the point of interconnection*." Emphasis added. Based on the
7 plain language of the Arizona Administrative Code, Qwest is responsible for any MUX or
8 installation or monthly fees for T1's or DS3's that it uses or requires to interconnect with NCC,
9 and it is a clear violation of law for Qwest to pass along that financial responsibility to NCC.
10 Accordingly, the Commission should prohibit Qwest from imposing fees on NCC for any Qwest
11 MUX to the point of interconnection, or, in the alternative, impose a mutual obligation for Qwest
12 to pay MUX fees to NCC. In addition, the Commission should prohibit Qwest from billing NCC
13 for installation fees for MUXes or trunks used by Qwest to interconnect with NCC.

14 If Qwest insists on, and is permitted to impose MUX fees, NCC should be permitted to
15 interconnect through a third party that will not charge MUX fees, installation fees or monthly
16 fees to NCC. Qwest's proposed prohibition on such third-party interconnection – even if that
17 third-party is interconnected with Qwest – exists for one reason: Qwest wants to continue
18 obtaining its unlawful, cash cow MUX fees and install fees from all interconnecting carriers.

19 **D. QWEST SHOULD BE REQUIRED TO PURCHASE NCC'S CNAM DATA ON**
20 **THE SAME TERMS AND CONDITIONS THAT NCC PURCHASES CNAM**
21 **DATA FROM QWEST**

22 In addition to the above-noted unlawful and discriminatory practices, Qwest also hinders
23 NCC's ability to provide competitive service offerings by refusing to purchase NCC's calling
24 name and number ("CNAM") data. CNAM data is the information that allows an NCC
25 customer's name to appear on caller ID when that NCC customer calls a Qwest customer.
26 Qwest's refusal to purchase CNAM data is one of the main reasons NCC does not send outbound
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28 ²⁵ *Id.*

1 calls over its interconnection trunks in Arizona and/or convert to SS7.²⁶ Many business
2 customers want their names displayed on the caller ID displays of the people they call. NCC has
3 requested that Qwest buy NCC's data under the same terms and conditions Qwest sells NCC
4 Qwest's data, but Qwest has refused.²⁷ Moreover, in an anticompetitive and discriminatory
5 move, Qwest distinguishes between its obligations to purchase CNAM data from ILECs versus its
6 obligations to purchase that same data from CLECs.²⁸

7 Under Arizona Administrative Code, 14-2-1303(A) all "new and incumbent LECs...are
8 required to provide nondiscriminatory access to all necessary network functions, databases and
9 service components required to provide competitive local exchange services...[including, but not
10 limited to]...800 LIDB and AIN databases." Qwest argues that it is only required to provide
11 access to CNAM data, not purchase CNAM data. That argument, however, ignores the fact that
12 caller ID is such a part of telecommunications service today that NCC's offerings are inferior if
13 they do not include CNAM data. The argument also ignores the fact that Qwest purchases such
14 data from other carriers and is strictly prohibited under Arizona Administrative Code, R14-2-
15 1112 from discriminating against any carrier.

16 Because Qwest's refusal to purchase CNAM data from NCC produces an anticompetitive
17 and discriminatory result, and because database access is a part of the parties' interconnection
18 obligations, the Commission should address that matter in this proceeding and require Qwest to
19 purchase NCC's CNAM data on the same terms and conditions that NCC is required to purchase
20 Qwest's CNAM data. Requiring a separate proceeding would make a mockery of the ICA
21 arbitration process and waste valuable Commission and judicial resources.

22 CONCLUSION

23 Qwest's proposed prohibition on MF signaling for call origination and cap on billable
24 minutes for call termination are lawful, prejudicial, discriminatory and inconsistent with public
25 policy and should be rejected. In addition, the Commission should reject Qwest's proposed RUF

26 ²⁶ Lesser Direct Testimony at 18; *see also* Lesser Reply Testimony at 19-20.

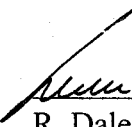
27 ²⁷ *Id.*

28 ²⁸ *Id.*

1 factor, restrictions on VNX and prohibitions against using a third-party tandem provider for
2 interconnection. Furthermore, the Commission should prohibit Qwest from imposing MUX fees
3 on NCC or, in the alternative, allow NCC to charge reciprocal MUX fees and installation fees to
4 Qwest. Moreover, the Commission should require Qwest to purchase NCC's CNAM data on the
5 same terms and conditions that NCC is required to purchase Qwest's CNAM data. Finally, the
6 Commission should prohibit Qwest from charging NCC for the billing records that Qwest
7 provides to NCC and that are required by NCC to bill Qwest for reciprocal compensation.

8 Dated: April 22, 2011

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